

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
PATRICK REGAN	:	DETERMINATION
	:	DTA NO. 816588
for Redetermination of a Deficiency or for Refund of	:	
New York State Personal Income Tax under Article 22 of	:	
the Tax Law for the Year 1994.	:	

Petitioner, Patrick Regan, 111 Westland Avenue, Rochester, New York 14618, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1994.

A hearing was held before Jean Corigliano, Administrative Law Judge, at the offices of the Division of Tax Appeals, 130 Main Street West, Rochester, New York, on February 25, 1999 at 10:30 A.M. with all briefs to be submitted by June 4, 1999, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Terrence M. Boyle, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether petitioner was a resident individual of New York State in 1994 and, therefore, subject to the New York State personal income tax for the entire year.

FINDINGS OF FACT

1. Petitioner, Patrick Regan, filed a 1994 New York State personal income tax return where he reported income from wages of \$3,365.00. Petitioner's address is shown on the return as 111 Westland Avenue, Rochester, New York.

2. Based on an audit of petitioner's 1994 return, the Division of Taxation ("Division") determined that petitioner owed additional personal income tax. It issued a Statement of Proposed Audit Changes to petitioner, dated November 22, 1996. It shows an adjustment of \$12,509.00 which increased petitioner's New York income from the amount reported to \$15,874.00. This adjustment resulted in additional tax due of \$458.00. The statement explained that for the 1994 tax year petitioner had filed a New York State return as a full-year resident but reported only a portion of the income which he reported to the Federal taxing authorities on his 1994 Federal return. Petitioner's New York income was increased to the amount reported on the Federal return resulting in the asserted tax due.

3. Petitioner responded to the Division's statement with a letter explaining that he was on active duty in the United States Navy from January 1, 1994 to October 20, 1994. He stated that he was a New York State resident from October 22 to December 31, 1994, and prior to that did not reside in New York State.

4. In a letter dated January 31, 1997, the Division explained its position as follows:

Military personnel residing in barracks on military installations or quarters on board ship are not considered as maintaining a permanent place of abode outside New York State for the entire taxable year and are subject to tax.
Information on file shows that you have been at the same New York State address since 1989.

Your Social Security Number is within the range issued to residents of New York State.

Residents of New York State who enter military service and are assigned to duty outside New York State do not change residence because of such assignment and remain New York State residents for tax purposes.

Since you are a New York State resident, your military pay is subject to New York income tax.

5. The Division issued a Notice of Deficiency to petitioner, dated February 24, 1997, asserting a tax deficiency of \$413.00 plus interest.

6. In this proceeding, petitioner continues to maintain that he was not a resident of New York State from January 1, 1994 through October 22, 1994.

7. Petitioner was born and raised in Monroe County in New York State. He attended school in Monroe County and lived in his parents' home in Rochester, New York until January 1991 when he joined the United States Navy at the age of 22. He paid no rent to his parents and made no contribution to household expenses while he resided with them.

8. Petitioner's first assignment after induction into the military was to boot camp in San Diego, California. Boot camp lasted about eight weeks, and he was then assigned to electronics school in Tennessee. He graduated in April 1992. His next assignment was to a squadron attached to the Naval Air Station Oceania in Virginia Beach, Virginia.

9. While assigned to his squadron, petitioner spent over a year in the Mediterranean Sea on board the U.S.S. *John F. Kennedy* and was also aboard the U.S.S. *Dwight D. Eisenhower* for a period of time. When he was not at sea, he was stationed in Virginia Beach. He estimated that he spent 40 days at sea in 1994.

10. Shortly after arriving in Virginia Beach, petitioner began sharing a residence with another sailor, John Coyle, who owned a mobile home near Virginia Beach. Petitioner paid his

friend \$250.00 per month to share the two-bedroom trailer under a month-to-month oral agreement.

11. Petitioner did not register to vote in Virginia. However, he obtained a Virginia driver's license and registered a car and motorcycle in Virginia, and all of his personal possessions were stored in Virginia.

12. While stationed in Virginia, petitioner's Federal income tax return was prepared by Navy personnel who were assigned the duty of preparing returns for sailors who requested that service. Petitioner does not remember filing a Virginia personal income tax return for 1994. He testified that he believed military personnel were exempt from paying Virginia income taxes, but it was apparent that he was not knowledgeable about Virginia tax law.

13. Petitioner's obligated service with the Navy ended early in 1995. However, his squadron was scheduled to go overseas again at the end of 1994. Rather than ship petitioner out on a carrier and then bring him home before the carrier returned to Virginia, the Navy released him from service as of October 20, 1994. Shortly after his release, he returned to Rochester, New York and began living with his parents. Several weeks later, he moved into his own apartment in Rochester, New York.

14. Petitioner testified that he considered his permanent home to be in Rochester, New York until he began living in Virginia.

15. Petitioner did not file New York State income tax returns for 1991, 1992 and 1993. He did not provide copies of any tax returns he may have filed in Virginia.

CONCLUSIONS OF LAW

A. New York State imposes an income tax on the New York taxable income of every “resident individual” (Tax Law § 601). As relevant here, Tax Law § 605(b)(1) defines a New York State resident individual as follows:

A resident individual means an individual:

(A) who is domiciled in this state, unless (1) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state . . . or

(B) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, *unless such individual is in active service in the armed forces of the United States* (emphasis added).

B. The income tax regulations of the New York State Department of Taxation and Finance provide a definition of the term “domicile” as it is used in the Tax Law (*see*, 20 NYCRR 105.20[d]). As relevant, it provides as follows:

Domicile. (1) Domicile, in general, is the place which an individual intends to be his permanent home -- the place to which he intends to return whenever he may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual’s intention in this regard, his declarations will be given due weight, but they will not be conclusive if they are contradicted by his conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicate that he did this merely to escape taxation in some other place.

* * *

(4) A person can have only one domicile. *If he has two or more homes, his domicile is the one which he regards and uses as his permanent home.* In

determining his intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive. As pointed out in subdivision (a) of this section, a person who maintains a permanent place of abode in New York State and spends more than 183 days of the taxable year in New York State is taxable as a resident even though he may be domiciled elsewhere. (Emphasis supplied.)

It is well established that an existing domicile continues until a new one is acquired, and the burden of proof to show a change in domicile rests upon the party alleging the change (*see, Matter of Newcomb's Estate*, 192 NY 238).

C. I agree with the Division that petitioner was domiciled in New York State in 1994. With respect to the domicile of a child, the Division's regulations state: "A child's domicile ordinarily follows that of such child's parents, until such child reaches the age of self-support and actually establishes his or her own separate domicile." Petitioner grew up in the Rochester area, went to school there, and lived there with his parents until he joined the Navy at the age of 22. He testified that he considered New York State to be his permanent home while he was in boot camp in California and electronics school in Tennessee. Since he was domiciled in New York when he joined the Navy, the burden was on petitioner to show a change of domicile from New York to Virginia prior to 1994. He did not carry this burden.

Section 105.20(d)(6) of the Division's regulations sets forth a standard for determining the domicile of a member of the United States Armed Forces. It provides:

Members of the Armed Forces. Section 514 of the Federal Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. Appx. § 574) provides that for purposes of taxation, an individual in the Armed Forces of the United States is not deemed to have lost such individual's domicile in any state solely by reason of being absent therefrom in compliance with military orders. Thus, such Federal law insures that an individual in the Armed Forces of the United States domiciled in New York State would not be deemed a domiciliary for income tax purposes in another state in which such individual is stationed. On the other hand, an individual in the Armed Forces of the United States domiciled in another state who is stationed in New York State would not be deemed a domiciliary, for

personal income tax purposes, of New York State. The rule is, generally speaking, that the domicile of a person is in no way affected by service in the Armed Forces of the United States. A change of domicile has to be shown by facts which objectively manifest a voluntary intention to make the new location a domicile. It is possible for an individual in the Armed Forces of the United States to change such individual's domicile; however, the requisite intent is difficult to prove.

There is little evidence that petitioner changed his domicile from New York to Virginia. The only indications of a change of domicile cited by petitioner were formal declarations of residence such as a driver's license, vehicle registration and a living arrangement in Virginia. There was no evidence that petitioner intended to make Virginia a permanent home with the "range of sentiment, feeling and permanent association" which indicate the establishment of a new domicile (*Matter of Bourne*, 181 Misc 238, 246, 41 NYS2d 336, *affd* 267 App Div 876, 47 NYS2d 134, *affd* 293 NY 785; *see, Matter of Bodfish v. Gallman*, 50 AD2d 457, 378 NYS2d 138). The fact that petitioner immediately left Virginia at the end of his military service, established no personal ties which would keep him in Virginia, and did not seek employment in Virginia after leaving the service are factors indicating that petitioner lacked the requisite intent to make Virginia his permanent home.

D. Pursuant to the Division's regulations an individual who is domiciled in New York is deemed to be a resident individual unless he or she satisfies all three of the following requirements: (1) the person maintains no permanent place of abode in New York during the year; (2) the person maintains a permanent place of abode outside New York during the entire year; and (3) the person spends not more than 30 days of the taxable year in New York (20 NYCRR 105.20[b][1]). None of these criteria were satisfied by petitioner.

Petitioner testified that he lived with his parents for only a short period of time after his release from the Navy, and then he moved into his own apartment in Rochester, New York.

Although the exact date that he moved into this apartment is not in the record, it would appear that the move took place in 1994. Thus, petitioner maintained a permanent place of abode in New York in 1994 and failed to satisfy the first criteria of the statute.¹

I disagree with the Division's claim that petitioner did not maintain a permanent place of abode in Virginia in 1994. It would not appear that petitioner's duty assignment in Virginia was of a temporary nature, and the type of lodging maintained by him was similar to an apartment or other leased dwelling (*see*, 20 NYCRR 105.20[e][2]). Although I conclude that petitioner maintained a permanent place of abode in Virginia, I find that he did not satisfy the second criteria of the statute because he did not keep that abode for the entire year. By his own admission he moved out of the trailer he was sharing with another sailor in October 1994.

Finally, petitioner concedes that he moved back to New York in late October 1994; consequently, it follows that he spent more than 30 days in New York in 1994.

In conclusion, I find that petitioner was a resident individual of New York in 1994 and subject to New York State income tax.

E. The petition of Patrick Regan is denied, and the Notice of Deficiency dated February 24, 1997 is sustained.

DATED: Troy, New York
November 18, 1999

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE

¹ The Division asserts that petitioner's parents' home constitutes a permanent place of abode for purposes of the statute. I do not agree that an adult child temporarily living with his or her parents is necessarily maintaining a permanent place of abode in New York within the meaning of the statute. Since petitioner moved to his own apartment shortly after returning to New York, there is no reason to closely analyze this question.